

*The Honorable Marsha J. Pechman*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

YOLANY PADILLA; IBIS GUZMAN; BLANCA  
ORANTES; BALTAZAR VASQUEZ;

Plaintiffs-Petitioners,

No. 2:18-cv-928 MJP

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
("ICE"); U.S. DEPARTMENT OF HOMELAND  
SECURITY ("DHS"); U.S. CUSTOMS AND BORDER  
PROTECTION ("CBP"); U.S. CITIZENSHIP AND  
IMMIGRATION SERVICES ("USCIS"); EXECUTIVE  
OFFICE FOR IMMIGRATION REVIEW ("EOIR");  
THOMAS HOMAN, Acting Director of ICE; KIRSTJEN  
NIELSEN, Secretary of DHS; KEVIN K. McALEENAN,  
Acting Commissioner of CBP; L. FRANCIS CISSNA,  
Director of USCIS; MARC J. MOORE, Seattle Field Office  
Director, ICE; JEFFERSON BEAUREGARD  
SESSIONS III, United States Attorney General; LOWELL  
CLARK, warden of the Northwest Detention Center in  
Tacoma, Washington; CHARLES INGRAM, warden of the  
Federal Detention Center in SeaTac, Washington; DAVID  
SHINN, warden of the Federal Correctional Institute in  
Victorville, California; JAMES JANECKA, warden of the  
Adelanto Detention Facility;

Defendants-Respondents.

**SECOND AMENDED  
COMPLAINT:  
CLASS ACTION FOR  
INJUNCTIVE AND  
DECLARATORY RELIEF**

## I. INTRODUCTION

1. This lawsuit initially challenged the legality of the following three parts of the federal government's zero-tolerance policy with respect to persons fleeing for safety and asylum in the United States: (1) family separations, (2) credible fear interviews and determinations, and (3) the related bond hearings.

### A. Family Separations

2. This lawsuit previously challenged the legality of the government's zero-tolerance practice of forcibly ripping children away from parents seeking asylum. The day after plaintiffs filed this suit in the Western District of Washington, however, a federal court in the Southern District of California issued a nationwide preliminary injunction Order against this forcible separation. (*Ms. L v. ICE*, S.D.Cal. case no. 18cv0428 DMS (MDD), docket no. 83).

3. With this Second Amended Complaint, plaintiffs confirm that they will not further pursue those claims in this case.

### B. Credible Fear Interviews & Determinations

4. This lawsuit challenges the legality of the government's policy or practice of excessively prolonging the detention of asylum seekers placed in expedited removal proceedings by failing to promptly provide them their credible fear interview and determination. Federal law requires that persons who have asked for asylum or expressed a fear of persecution must be scheduled for a "credible fear interview" with a DHS official to determine whether that person should be allowed to proceed with applying for asylum because he or she has a credible fear of persecution. If the interviewer determines the asylum seeker does have a credible fear of persecution, the government assigns the case to the federal immigration court for hearings to adjudicate the merits of that person's asylum claim. If the interviewer determines the asylum seeker does not have a credible fear of persecution, the asylum seeker can appeal that determination to a federal immigration judge. But in either case, the federal government detains

1 the asylum seeker until it determines that she or he has a credible fear of persecution. The *Ms. L*  
2 *v. ICE* Order did not address the federal government's lengthy delays in conducting these  
3 statutorily required credible fear interviews and or determinations.

4 **C. Bond Hearings**

5 5. This lawsuit also challenges the legality of the government's related policy or  
6 practice of excessively prolonging the detention of asylum seekers by failing to promptly  
7 conduct the bond hearings required by federal law after an asylum seeker's positive completion  
8 of their credible fear interview. Federal law requires that if an asylum seeker enters the United  
9 States at a location other than a designated "Port Of Entry" and is determined to have a credible  
10 fear of persecution in his or her credible fear interview, that asylum seeker is entitled to an  
11 individualized bond hearing before an immigration judge to determine reasonable conditions for  
12 that person's release from federal detention while he or she awaits the many months it takes to  
13 adjudicate his or her asylum claim (e.g., a reasonable bond amount or parole without posting a  
14 monetary bond). This bond hearing must comport with constitutional requirements. Yet the  
15 government does not establish any timeline for setting this hearing, and as a matter of practice,  
16 does not even audio record or provide a transcript of this hearing for appeal or appellate review  
17 (unlike other hearings in removal proceedings before the immigration judge). The government  
18 also places the burden on asylum seekers to demonstrate in the bond hearing that they should not  
19 continue to be detained throughout the lengthy immigration proceedings. When an immigration  
20 judge denies bond, the immigration judge routinely fails to make specific findings but instead  
21 simply checks a box on a template order. The *Ms. L v. ICE* Order did not address the federal  
22 government's failure to conduct prompt bond hearings that comport with constitutional  
23 requirements.

**D. United States Constitution**

6. The Bill of Rights prohibits the federal government from depriving any person of their liberty without due process of law (U.S. Constitution, 5<sup>th</sup> Amendment).

7. Asylum seekers who cross the United States border are persons. They accordingly have a constitutionally protected liberty interest in (1) not being imprisoned for an unreasonable time awaiting their credible fear interview and determination and (2) not being imprisoned without the opportunity for a prompt bond hearing that comports with constitutional requirements. And especially with respect to the federal government's avowed policy or practice to deter criminal violations of federal immigration laws, asylum seekers also have a constitutionally protected interest in (3) not being subjected to prolonged imprisonment for deterrence or penalty reasons unrelated to adjudicating the merits of their individual asylum claim.

8. With this Second Amended Complaint, plaintiffs specify with more particularity how defendants' implementation of the federal government's policies and practices with respect to persons fleeing for safety and seeking asylum in the United States violates the United States Constitution.

**E. Federal Law**

9. Federal law prohibits final agency action that is arbitrary, capricious, unlawfully withheld, or unreasonably delayed (e.g., Administrative Procedures Act, 5 U.S.C. §706). Federal law also grants persons fleeing persecution the right to apply for safety and asylum in the United States (e.g., 8 U.S.C. §§ 1225 & 1158; 8 C.F.R. §§ 235.3, 208.30, & 1003.42).

10. Federal law accordingly prohibits federal agencies from arbitrarily or capriciously depriving an asylum seeker of their child, their prompt credible fear interview and determination, or their prompt bond hearing. Federal law prohibits federal agencies from unlawfully withholding or unreasonably delaying an asylum seeker's reunification with their child, an

1 asylum seeker's credible fear interview and determination, or an asylum seeker's bond hearing.  
 2 And federal law prohibits federal agencies from impeding or seeking to deter an asylum seeker's  
 3 legal right to apply for asylum.

4 11. With this Second Amended Complaint, plaintiffs specify with more particularity  
 5 how defendants' implementation of the federal government's policies and practices with respect  
 6 to persons fleeing for safety and asylum in the United States violates federal law.

#### 7 **F. Requested Relief**

8 12. With respect to (1) credible fear interviews and determinations and (2) the related  
 9 bond hearings, plaintiffs request injunctive relief requiring defendants to cease their policies and  
 10 practices implementing the federal government's policy or practice in violation of the United  
 11 States Constitution and federal law. Plaintiffs request declaratory relief to terminate the parties'  
 12 disagreement with respect to whether (and how) defendants' implementation of the federal  
 13 government's policies or practices with respect to persons fleeing for safety and asylum in the  
 14 United States violates the United States Constitution and federal law. Lastly, plaintiffs request  
 15 whatever additional relief this Court finds warranted, just, or equitable.

### 16 **II. JURISDICTION**

17 13. This case arises under the Fifth Amendment of the United States Constitution, the  
 18 Administrative Procedures Act ("APA"), and federal asylum statutes. This Court has jurisdiction  
 19 under 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2241 (habeas jurisdiction);  
 20 and Article I, § 9, clause 2 of the United States Constitution ("Suspension Clause").

21 14. The original plaintiffs in this case were all in custody for purposes of habeas  
 22 jurisdiction when this action was filed on June 25, 2018.

23 15. After this action was filed, plaintiffs Padilla, Orantes, and Guzman were  
 24 eventually released from detention after they were eventually provided a credible fear interview  
 25 and individualized bond hearings before an immigration judge. At the time this Second  
 26

1 Amended Complaint is electronically filed on August 22, 2018, plaintiff Vasquez is still in  
2 custody for purposes of habeas jurisdiction.

3 16. At the time this Second Amended Complaint is electronically filed on August 22,  
4 2018, all the children that the federal government took away from plaintiffs have been returned  
5 to their mothers after approximately two months of being separated.

6 **III. VENUE**

7 17. Venue lies in this District under 28 U.S.C. § 1391 because a substantial portion of  
8 the relevant facts occurred within this District. Those facts include defendants' detention of  
9 plaintiffs Padilla, Guzman, and Orantes in this District while forcibly separated from their  
10 children, failure in this District to promptly conduct a credible fear interview and determination  
11 for their asylum claims, and failure in this District to promptly conduct bond hearings that  
12 comport with constitutional requirements to set reasonable conditions for release pending  
13 adjudication of their asylum claims.

14 **IV. PARTIES**

15 18. Plaintiff **Yolany Padilla** is a human being seeking asylum for herself and her  
16 6-year-old son (J.A) in the United States. She is a citizen of Honduras.

17 19. Plaintiff **Ibis Guzman** is a human being seeking asylum for herself and her  
18 5-year-old son (R.G.) in the United States. She is a citizen of Honduras.

19 20. Plaintiff **Blanca Orantes** is a human being seeking asylum for herself and her  
20 8-year-old son (A.M.) in the United States. She is a citizen of El Salvador.

21 21. Plaintiff **Baltazar Vasquez** is a human being seeking asylum in the United States.  
22 He is a citizen of El Salvador.

23 22. Defendant U.S. Immigration and Customs Enforcement ("ICE") is the federal  
24 government agency that carries out removal orders and oversees immigration detention. ICE is  
25 part of DHS. ICE's responsibilities include determining whether an asylum seeker will be  
26

1 released and how soon his or her case will be submitted for a credible fear interview and  
2 subsequent proceedings on the merits before the immigration court. ICE's local field office in  
3 Tukwila, Washington, is responsible for determining whether plaintiffs detained in Washington  
4 will be released, and how soon their cases will be submitted for credible fear interview and  
5 subsequent proceedings before the immigration court.

6 23. Defendant U.S. Department of Homeland Security ("DHS") is the federal  
7 government agency that enforces immigration laws of the United States. DHS's responsibilities  
8 include determining whether an asylum seeker will be released and how soon his or her case will  
9 be submitted for a credible fear interview and subsequent proceedings before the immigration  
10 court. DHS's local field office in Tukwila, Washington, is responsible for determining whether  
11 plaintiffs detained in Washington will be released, and how soon their cases will be submitted for  
12 credible fear interview and subsequent proceedings before the immigration court.

13 24. Defendant U.S. Customs and Border Protection ("CBP") is the federal  
14 government agency that conducts the initial processing and detention of asylum seekers crossing  
15 the U.S. border. CBP is part of DHS. CBP's responsibilities include determining whether an  
16 asylum seeker will be released and how soon his or her case will be submitted for a credible fear  
17 interview and determination.

18 25. Defendant U.S. Citizenship and Immigration Services ("USCIS") is the federal  
19 government agency that, through its asylum officers, interviews asylum seekers to determine  
20 whether they should be assigned to the immigration court to be allowed to proceed with applying  
21 for asylum because they have a credible fear of persecution. USCIS is a part of DHS.

22 26. Defendant Executive Office for Immigration Review ("EOIR") is the federal  
23 government agency that is responsible for conducting immigration court proceedings, including  
24 adjudicating plaintiffs' asylum claims in removal proceedings and conducting individual bond  
25 hearings for persons in removal proceedings. EOIR is a part of the Department of Justice.

1           27. Defendant Thomas Homan is sued in his official capacity as the Director of ICE,  
2 and is a legal custodian of plaintiff Vasquez and putative class members.

3           28. Defendant Marc J. Moore is sued in his official capacity as the ICE Seattle Field  
4 Office Director, and is a legal custodian of detained plaintiffs.

5           29. Defendant Kirstjen Nielsen, is sued in her official capacity as the Secretary of  
6 DHS. In this capacity, she directs DHS, ICE, CBP, and USCIS. As a result, defendant Nielsen  
7 has responsibility for the administration of immigration laws pursuant to 8 U.S.C. §1103 and is a  
8 legal custodian of detained plaintiffs.

9           30. Defendant Kevin K. McAleenan is sued in his official capacity as the  
10 Commissioner of CBP.

11           31. Defendant L. Francis Cissna is sued in his official capacity as the Director of  
12 USCIS.

13           32. Defendant Jefferson Beauregard Sessions III is sued in his official capacity as the  
14 United States Attorney General. In this capacity, he directs agencies within the United States  
15 Department of Justice, including EOIR. Defendant Sessions has responsibility for the  
16 administration of immigration laws pursuant to 8 U.S.C. §1103, oversees defendant EOIR, and is  
17 empowered to grant asylum or other relief, including custody determinations made for persons in  
18 removal proceedings.

19           33. Defendant Lowell Clark is sued in his official capacity as the warden of the  
20 Northwest Detention Center in Tacoma, Washington.

21           34. Defendant Charles Ingram is sued in his official capacity as the warden of the  
22 Federal Detention Center in SeaTac, Washington.

23           35. Defendant David Shinn is sued in his official capacity as the warden of the  
24 Federal Correctional Institute in Victorville, California.



36. Defendant James Janecka is sued in his official capacity as the warden of the Adelanto Detention Facility in Adelanto, California.

**V. FACTS**

**A. Seeking Asylum**

37. Federal law allows a person to seek asylum in the United States.

38. Plaintiffs are persons seeking asylum in the United States.

39. Plaintiff **Yolany Padilla** and her 6-year-old son J.A. are asylum seekers who fled physical danger and persecution in Honduras.

40. On or about May 18, 2018, plaintiff Yolany Padilla and her 6-year-old son J.A. crossed the U.S.-Mexico border. They were arrested by a CBP agent as they were making their way to the closest Port Of Entry. She informed the CBP agent that they were seeking asylum.

41. Plaintiff **Ibis Guzman** and her 5-year-old son R.G. are asylum seekers who fled physical danger and persecution in Honduras.

42. On or about May 16, 2018, plaintiff Ibis Guzman and her 5-year-old son R.G. crossed the U.S.-Mexico border. They were arrested by a CBP agent. She informed the CBP agent that they were seeking asylum.

43. Plaintiff **Blanca Orantes** and her 8-year-old son A.M. are asylum seekers who fled physical danger and persecution in El Salvador.

44. On or about May 21, 2018, plaintiff Blanca Orantes and her 8-year-old son A.M. crossed the U.S.-Mexico border. They immediately walked to the CBP station to request asylum, and were arrested by a CBP agent. She informed the CBP agent that they were seeking asylum.

45. Plaintiff **Baltazar Vasquez** is an asylum seeker who fled physical danger and persecution in El Salvador.

1           46.     On or about June 1, 2018, Baltazar Vasquez crossed the U.S.-Mexico border. He  
2 was arrested by a CBP agent, and informed the CBP agent that he was seeking asylum.

3 **B.     Defendants' Zero-Tolerance Policy or Practice**

4           47.     Defendant Sessions made an announcement about the federal government's  
5 "Zero-Tolerance Policy" on April 6, 2018, *See* [https://www.justice.gov/opa/pr/attorney-general-](https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry)  
6 [announces-zero-tolerance-policy-criminal-illegal-entry](https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry).

7           48.     The federal government's zero-tolerance policy was designed to be a coordinated  
8 effort to deter asylum seekers entering the country and exercising their right to apply for asylum  
9 by criminally prosecuting them, forcibly separating them from their children, and imposing  
10 prolonged, uncertain imprisonment (euphemistically called "detention") on them.

11           49.     The federal government's zero-tolerance policy has been implemented against  
12 asylum seekers who enter the country without inspection requesting asylum.

13           50.     The federal government's zero-tolerance policy has also been implemented  
14 against asylum seekers who appear at a Port Of Entry to request asylum.

15 **C.     Promptly Taking Children Away From Parents Seeking Asylum**

16           51.     One part of the federal government's zero-tolerance policy or practice was to  
17 promptly take children away from parents seeking asylum in the United States.

18           52.     The federal government would send the parent and child to separate federal  
19 detention facilities – often in different states thousands of miles away from each other.

20           53.     A child's forced separation from a parent causes the child severe trauma. This  
21 damage is even worse for children who are already traumatized from fleeing danger and  
22 persecution in their home country. The cognitive and emotional damage caused by a child's  
23 forced separation from a parent can be permanent.

24           54.     A parent's forced separation from their child is also deeply damaging to the  
25 parent. This damage is even worse for parents who are already traumatized from fleeing danger  
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1 and persecution in their home country, are given little to no information regarding the well-being  
2 or whereabouts of their child, and fear they may never see their child again.

3 55. The federal government promptly took children away from parents seeking  
4 asylum in the United States without any demonstration in a hearing that that parent is unfit or  
5 presents any danger to the child.

6 56. The federal government promptly took children away from parents seeking  
7 asylum in the United States without any evidence or accusation that the parent seeking asylum is  
8 an unfit parent, or presents a danger to the child, or is not acting in the child's best interest, or is  
9 a threat to the child's safety, or abused the child, or neglected the child.

10 57. The federal government promptly took children away from parents seeking  
11 asylum in the United States to penalize and deter persons from seeking asylum.

12 58. The federal government promptly took children away from parents seeking  
13 asylum in the United States as part of its zero-tolerance policy against criminal violations of  
14 federal immigration laws.

15 59. Plaintiffs Yolany Padilla, Ibis Guzman, and Blanca Orantes are parents who  
16 sought asylum and were (1) detained in immigration custody by defendants in Washington State  
17 and (2) separated from a minor child by defendants without any demonstration in a hearing that  
18 that parent is unfit or presents a danger to the child.

19 60. When plaintiff **Yolany Padilla** and her 6-year-old son J.A were taken into  
20 custody, a federal agent promptly announced that Yolany Padilla's son would be taken away  
21 from her. Her 6-year-old son clutched his mother's shirt and said, "No, mommy, I don't want to  
22 go." She reassured her son that any separation would be short, and that everything would be  
23 okay. She was able to stay with her son as they were transferred to one of the federal detention  
24 buildings that detainees commonly refer to as "the hielera" ("the freezer") because of its cold  
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1 temperatures. Once they arrived, Yolany Padilla's 6-year-old son was forcibly taken away from  
2 her without explanation.

3 61. Yolany Padilla's 6-year-old son was taken away from her without any hearing,  
4 and without any accusation or evidence that she is in any way an unfit parent, or that she is in  
5 any way not acting in his best interest fleeing for safety in the United States, or that she is in any  
6 way a threat to his safety, or that she in any way abused him, or that she in any way neglected  
7 him.

8 62. Yolany Padilla was then transferred to another federal facility in Laredo, Texas  
9 about three days later. The federal officers in that facility took her son's birth certificate from  
10 her. When she asked for it back, she was told the immigration authorities had it. No one has  
11 returned her son's birth certificate to her.

12 63. About twelve days later, Yolany Padilla was transferred to the Federal Detention  
13 Center in SeaTac, Washington.

14 64. Despite repeated inquiries into her son's whereabouts, Yolany Padilla was not  
15 provided any information about her son until about a month into her detention, when the  
16 Honduran consul visited the detention center and she explained she had no news of her son.  
17 Soon thereafter she was given a piece of paper saying her son had been put in a place called  
18 "Cayuga Center" in New York. That piece of paper also had a phone number, but she was not  
19 able to call her son that day because she did not have money to make a long distance phone call.

20 65. The next day, someone gave Yolany Padilla the opportunity to call her son for  
21 about ten minutes. Her 6-year-old son mostly cried quietly.

22 66. Yolany Padilla was not released from federal imprisonment until July 6, 2018,  
23 after an immigration judge finally granted her a bond.  
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1           67.     Yolany Padilla's 6-year-old son was not released from federal imprisonment until  
2     July 14, 2018. That was almost two months after the federal government forcibly took him away  
3     from his mom.

4           68.     CBP transported plaintiff **Ibis Guzman** and her 5-year-old son R.G. to one of the  
5     federal detention buildings in Texas that detainees commonly refer to as "the hielera" ("the  
6     freezer") because of its cold temperatures. One CBP agent questioned Ibis Guzman, and  
7     another CBP agent forcibly took her son away stating she would see her son again in three days.

8           69.     Ibis Guzman's 5-year-old son was taken away from her without any hearing, and  
9     without any accusation or evidence that she is in any way an unfit parent, or that she is in any  
10    way not acting in his best interest fleeing for safety in the United States, or that she is in any way  
11    a threat to his safety, or that she in any way abused him, or that she in any way neglected him.

12          70.     After three days, Ibis Guzman was transferred to a different CBP facility in  
13    Texas. When she asked the federal agents there about the reunification with her son that the  
14    CBP agent had promised, they told her they did not know anything about her son's whereabouts.

15          71.     Ibis Guzman was then transferred to another federal facility in Laredo, Texas,  
16    where she was detained without any knowledge of the whereabouts of her 5-year-old son and  
17    without any means to contact him. She did not receive any information about him during this  
18    time, despite her repeated attempts to obtain such information.

19          72.     About two weeks later, Ibis Guzman was transferred to the Federal Detention  
20    Center in SeaTac, Washington.

21          73.     Ibis Guzman was not provided any information about her 5-year-old son until  
22    about a week later, when she was told that her son had been given to a place called "Baptist  
23    Child and Family Services" in San Antonio, Texas. But she was still not able to contact him.

24          74.     On June 20, 2018, Ibis Guzman was transferred to the Northwest Detention  
25    Center in Tacoma, Washington.

1           75.     Ibis Guzman was denied bond by the immigration judge at her bond hearing on  
2 July 3, 2018.

3           76.     She was not released until on or about July 31, 2018, after the federal government  
4 was forced to comply with the preliminary injunction in *Ms. L.*, and thereafter reunited with her  
5 child.

6           77.     CBP transported plaintiff **Blanca Orantes** and her 8-year-old son A.M. to a  
7 federal detention facility in Texas. CBP agents led Blanca Orantes into one of the federal  
8 detention buildings that detainees commonly refer to as “the hielera” (“the freezer”) because of  
9 its cold temperatures, and took her 8-year-old son to another part of that detention facility.

10          78.     While a CBP agent was later interviewing Blanca Orantes, another agent brought  
11 her 8-year-old son to her and told her to “say goodbye” to him because they were being  
12 separated. Her 8-year-old son began crying and pleading for his mom not to leave him.

13          79.     Blanca Orantes’ 8-year-old son was taken away from her without any hearing,  
14 and without any accusation or evidence that she is in any way an unfit parent, or that she is in  
15 any way not acting in his best interest fleeing for safety in the United States, or that she is in any  
16 way a threat to his safety, or that she in any way abused him, or that she in any way neglected  
17 him.

18          80.     On or around May 24, 2018, Blanca Orantes was handcuffed and taken to court.  
19 She pled guilty to improper entry under 8 U.S.C. §1325 and was sentenced to time served. She  
20 was then returned to her cell.

21          81.     About nine days later, Blanca Orantes was transported to the Federal Detention  
22 Center in SeaTac, Washington.

23          82.     The federal government did not provide Blanca Orantes any information about  
24 her 8-year-old son until June 9, 2018, when an ICE officer handed her a slip of paper saying her  
25 son was being held at place called “Children’s Home of Kingston” in Kingston, New York.

1           83.     On June 20, 2018, Blanca Orantes was transferred to the Northwest Detention  
2 Center in Tacoma, Washington, where she was finally allowed to speak to her 8-year-old son by  
3 telephone.

4           84.     Blanca Orantes was denied bond by the immigration judge at her bond hearing on  
5 July 16, 2018.

6           85.     She was not released until on or about July 24, 2018, in order to comply with the  
7 preliminary injunction in *Ms. L.*, and thereafter reunited with her child.

8     **D.     Failing To Promptly Provide The Credible Fear Interview & Determination**  
9     **Required By Federal Law**

10          86.     One part of the federal government's policy or practice is to keep asylum seekers  
11 in limbo in federal detention by delaying the threshold credible fear interview to which asylum  
12 seekers are entitled under federal law.

13          87.     Detained asylum seekers who are subject to expedited removal are not permitted  
14 to move forward with their asylum claims until a credible fear determination has been made by a  
15 DHS official.

16          88.     The federal government keeps asylum seekers in limbo in federal detention by  
17 delaying their credible fear interview in part to penalize and deter persons from seeking asylum.

18          89.     The federal government keeps asylum seekers in limbo in federal detention by  
19 delaying their credible fear interview.

20          90.     The federal government has not established any procedural timeframes for  
21 providing asylum seekers the credible fear interview and determinations required by federal law.

22          91.     Plaintiffs Yolany Padilla, Ibis Guzman, Blanca Orantes, and Baltazar Vasquez are  
23 detained asylum seekers subject to expedited removal proceedings under 8 U.S.C. § 1225(b) who  
24 were not provided a credible fear interview and determination within 10 days of requesting  
25 asylum or expressing a fear of persecution to a DHS official.

1           92.     When plaintiff **Yolany Padilla** first spoke with the CBP agent on or about  
2 May 18, 2018, she told the CBP agent that she and her son were requesting asylum.

3           93.     Neither Yolany Padilla nor her son were provided a credible fear interview within  
4 10 days of requesting asylum or expressing a fear of persecution to a DHS official.

5           94.     Neither Yolany Padilla nor her son were provided a credible fear interview as of  
6 the date this lawsuit was originally filed on June 25, 2018.

7           95.     Instead, Yolany Padilla was not provided her credible fear interview until July 2,  
8 2018. That was more than a month after federal officials imprisoned her. The DHS official  
9 conducting her credible fear interview determined that Yolany Padilla does have a credible fear  
10 of persecution, and therefore assigned her asylum claim to immigration court for adjudication on  
11 the merits

12           96.     When plaintiff **Ibis Guzman** first spoke with the CBP agent on or about May 16,  
13 2018, she told the CBP agent that she and her son were requesting asylum.

14           97.     Neither Ibis Guzman nor her son were provided a credible fear interview within  
15 10 days of requesting asylum or expressing a fear of persecution to a DHS official.

16           98.     Neither Ibis Guzman nor her son were provided a credible fear interview as of the  
17 date this lawsuit was originally filed on June 25, 2018.

18           99.     Instead, Ibis Guzman was not provided her credible fear interview until June 27,  
19 2018. That was more than a month after federal officials imprisoned her. The DHS official  
20 conducting her credible fear interview determined that Ibis Guzman does have a credible fear of  
21 persecution, and therefore assigned her asylum claim to immigration court for adjudication on  
22 the merits.

23           100.    When plaintiff **Blanca Orantes** first spoke with the CBP agent on or about  
24 May 21, 2018, she told the CBP agent that she and her son were requesting asylum.  
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1           101. Neither Blanca Orantes nor her son were provided a credible fear interview within  
2 10 days of requesting asylum or expressing a fear of persecution to a DHS official.

3           102. Neither Blanca Orantes nor her son were provided a credible fear interview as of  
4 the date this lawsuit was originally filed on June 25, 2018.

5           103. Instead, Blanca Orantes was not provided her credible fear interview until  
6 June 27, 2018. That was more than a month after federal officials imprisoned her. The DHS  
7 official conducting her credible fear interview determined that Blanca Orantes does have a  
8 credible fear of persecution, and therefore assigned her asylum claim to immigration court for  
9 adjudication on the merits.

10           104. When plaintiff **Baltazar Vasquez** first spoke with the CBP agent on or about  
11 June 1, 2018, he told the CBP agent that he was requesting asylum.

12           105. Baltazar Vasquez was not provided a credible fear interview within 10 days of  
13 requesting asylum or expressing a fear of persecution to a DHS official.

14           106. Baltazar Vasquez was not provided a credible fear interview as of the date this  
15 lawsuit was originally filed on June 25, 2018.

16           107. Baltazar Vasquez was not scheduled for a credible fear interview until after the  
17 First Amended Complaint was electronically filed on July 15, 2018.

18           108. Baltazar Vasquez was not provided his credible fear interview until July 31, 2018.  
19 That was almost two months after federal officials imprisoned him. The DHS official conducting  
20 his credible fear interview determined that Baltazar Vasquez does have a credible fear of  
21 persecution, and therefore referred his case to an immigration court for adjudication of the merits  
22 of his asylum claim.

23           109. Baltazar Vasquez is currently imprisoned at the Adelanto Detention facility in  
24 Adelanto, California.

**E. Failing To Promptly Provide The Bond Hearing Required By Federal Law**

110. One part of the federal government's policy or practice is to prolong imprisonment without a proper bond hearing for asylum seekers who entered the United States without inspection.

111. The federal government keeps asylum seekers in limbo in federal detention by delaying their bond hearing in part to penalize and deter persons from seeking asylum.

112. The federal government keeps asylum seekers in limbo in federal detention by delaying their bond hearing.

113. The federal government has not established any procedural timeframes for timely providing the bond hearings required by federal law. The federal government has not established basic procedural safeguards for bond hearings such as verbatim transcripts or audio recordings of bond hearings. The absence of such basic safeguards impedes an imprisoned asylum seeker's ability to meaningful appeal the denial of bond in their individual case as not being based on evidence of legally relevant factors (i.e., being a flight risk or danger to the community) instead of legally irrelevant factors (e.g., the zero-tolerance policy's general goal of punishing and deterring asylum seekers). Defendant EOIR maintains audio recordings of proceedings before an Immigration Judge other than bond hearings, and provides verbatim transcripts on appeals to the Board of Immigration Appeals. But Defendant EOIR does not maintain audio recordings of an asylum seeker's bond hearing or provide verbatim transcripts for appeal of bond hearing determinations. Indeed, when an immigration judge denies bond, they routinely do not make specific, particularized findings, and instead simply check a box on a template order. Moreover, Defendants place the burden of proof on the noncitizen to demonstrate that they should not continue to be detained throughout their lengthy immigration proceedings.

114. Plaintiff **Yolany Padilla** is an asylum seeker who originally entered the United States without inspection, was initially subject to expedited removal proceedings under

1 8 U.S.C. §1225(b) and detained, was determined to have a credible fear of persecution, but was  
2 not provided a timely bond hearing with a verbatim transcript or audio recording.

3 115. The federal government did not provide Yolany Padilla a bond hearing until after  
4 she filed this lawsuit. At the conclusion of that bond hearing, an order was issued allowing her  
5 to be released from federal detention upon posting an \$8,000 bond pending the adjudication of  
6 her asylum claim on the merits. To her knowledge, there is no verbatim transcript or recording  
7 of her bond hearing. At the bond hearing, the immigration judge placed the burden of proof on  
8 Yolany Padilla to demonstrate that she qualified for a bond.

9 116. Plaintiffs **Ibis Guzman** is a detained asylum seeker who originally entered the  
10 United States without inspection, was initially subject to expedited removal proceedings under  
11 8 U.S.C. §1225(b), was determined to have a credible fear of persecution, but was not provided a  
12 timely bond hearing with a verbatim transcript or audio recording.

13 117. The federal government did not provide Ibis Guzman a bond hearing until after  
14 she filed this lawsuit. At the bond hearing, the immigration judge placed the burden of proof on  
15 Ibis Guzman to demonstrate that she qualified for a bond. At the conclusion of that bond  
16 hearing, an immigration judge issued an order denying her release on *any* bond amount pending  
17 the adjudication of her asylum claim on the merits.

18 118. The immigration judge did not make specific, particularized findings for the basis  
19 of the denial. The immigration judge circled the preprinted words “Flight Risk” on a form order,  
20 rendering her ineligible for bond even though a DHS official had already determined she has a  
21 credible fear of persecution and even though the federal government has taken away her  
22 6-year-old son.

23 119. The immigration judge provided no written explanation for circling “Flight Risk”  
24 or the factors and evidence considered in making that conclusion to deny bond. Per defendant  
25 EOIR’s practice, there is no verbatim transcript or recording of her bond hearing. She was not  
26

1 released until on or about July 31, 2018, in order to comply with the preliminary injunction in  
2 *Ms. L.*

3 120. Plaintiff **Blanca Orantes** is a detained asylum seeker who originally entered the  
4 United States without inspection, was initially subject to expedited removal proceedings under  
5 8 U.S.C. §1225(b), was determined to have a credible fear of persecution once she was  
6 eventually provided her credible fear interview and determination, but was not provided a bond  
7 hearing with a verbatim transcript or recording of the hearing within 7 days of requesting a bond  
8 hearing.

9 121. Blanca Orantes was not provided a bond hearing until July 16, 2018. At the bond  
10 hearing, the immigration judge placed the burden of proof on Blanca Orantes to demonstrate that  
11 she qualified for a bond. At the conclusion of that bond hearing, an immigration judge issued an  
12 order denying her release on *any* bond amount pending the adjudication of her asylum claim on  
13 the merits.

14 122. The immigration judge did not make specific, particularized findings for the basis  
15 of the denial, and even failed to check the box indicating why she was denied bond on the  
16 template order. Per defendant EOIR's practice, there is no verbatim transcript or recording of her  
17 bond hearing. At the bond hearing the immigration judge placed the burden on Blanca Orantes  
18 to demonstrate that she was qualified for a bond.

19 123. She was not released until on or about July 23, 2018, after the federal government  
20 was forced to comply with the preliminary injunction in *Ms. L.*, and thereafter reunited her with  
21 her child.

22 124. Plaintiff **Baltazar Vasquez** is a detained asylum seeker who originally entered  
23 the United States without inspection, was initially subject to expedited removal proceedings  
24 under 8 U.S.C. §1225(b), was determined to have a credible fear of persecution once he was  
25 eventually provided his credible fear interview and determination, but was not provided a bond  
26

1 hearing with a verbatim transcript or recording of the hearing within 7 days of requesting a bond  
2 hearing.

3 125. The federal government did not provide Baltazar Vasquez a bond hearing until  
4 August 20, 2018. At the bond hearing, the immigration judge placed the burden of proof on  
5 Baltazar Vasquez to demonstrate that he qualified for a bond. At the conclusion of that bond  
6 hearing, an order was issued allowing him to be released from federal detention upon posting a  
7 \$9,000 bond pending the adjudication of his asylum claim on the merits. There is no verbatim  
8 transcript or recording of his bond hearing.

## 9 VI. CLASS ALLEGATIONS

10 126. The named plaintiffs are asylum seekers who filed this suit on behalf of  
11 themselves and their family members being detained in federal detention.

12 127. The named plaintiffs also bring this suit as a class action under Fed.R.Civ.P. 23(b)  
13 on behalf of the other similarly situated persons specified in the two classes of asylum seekers  
14 specified in Part VI of this Second Amended Complaint.

### 15 A. “Credible Fear Interview Class”

16 128. With respect to plaintiffs’ claims concerning defendants’ failure to promptly  
17 provide asylum seekers a credible fear interview and determination, plaintiffs seek to represent  
18 the following class (the “**credible fear interview class**”):

19 All detained asylum seekers in the United States subject to expedited removal proceedings  
20 under 8 U.S.C. §1225(b) who are not provided a credible fear determination within 10 days  
21 of requesting asylum or expressing a fear of persecution to a DHS official, absent a request  
by the asylum seeker for a delayed credible fear interview.

22 129. Plaintiffs allege the following on information and belief: At least several hundred  
23 asylum seekers currently fit within the **credible fear interview class**. Defendants should know  
24 the precise number since the members of this class should be readily ascertainable through  
25 defendants’ records.

1           130. The **credible fear interview class** satisfies Rule 23(a)(1). This class is so  
2 numerous that joinder of all class members is impracticable.

3           131. The **credible fear interview class** satisfies Rule 23(a)(2). There are questions of  
4 law or fact common to this class. Given the definition of this class, its members all share the  
5 same common factual situation of being a detained asylum seeker subject to defendants' practice  
6 of failing to provide a credible fear interview and determination within 10 days of their  
7 expressing a fear of persecution or a request for asylum to a DHS official, despite the fact they  
8 have been placed in expedited removal proceedings under 8 USC § 1225(b), which requires  
9 immediate action. The members of this class share common questions of law governing whether  
10 defendants' practice of failing to provide class members a credible fear interview and  
11 determination within 10 days of their expressing a fear of persecution or a request for asylum to  
12 a DHS official is legal under the Fifth Amendment, APA, or federal asylum statutes.

13           132. The **credible fear interview class** satisfies Rule 23(a)(3). Plaintiffs' claims  
14 concerning the legality of defendants' practice of failing to provide a credible fear interview and  
15 determination within 10 days of their expressing a fear of persecution or a request for asylum to  
16 a DHS official are typical of the claims of class members. As noted in the prior paragraph, the  
17 definition of this class dictates that plaintiffs share with the other class members the same  
18 common factual situation and the same common questions of law under the Fifth Amendment,  
19 APA, and federal asylum statutes.

20           133. The **credible fear interview class** satisfies Rule 23(a)(4). Plaintiffs will fairly  
21 and adequately protect the interests of that class. They are represented by counsel from the  
22 Northwest Immigrant Rights Project and the American Immigration Council, who have extensive  
23 experience litigating class action lawsuits and other complex cases in federal court, including  
24 civil rights lawsuits on behalf of noncitizens.

1           134. The **credible fear interview class** satisfies Rule 23(b)(1). Requiring separate  
 2 actions by the members of this class would create the risk of inconsistent or varying  
 3 adjudications with respect to individual class members that would establish incompatible  
 4 standards of conduct for defendants. Requiring separate actions by the members of this class  
 5 would create the risk of adjudications with respect to individual class members that, as a  
 6 practical matter, would be dispositive of the interests of the other class members not parties to  
 7 the individual adjudications, or would at least substantially impair or impede their ability to  
 8 protect their interests.

9           135. The **credible fear interview class** satisfies Rule 23(b)(2). Defendants have acted  
 10 or refused to act on grounds that apply generally to this class. Final injunctive relief or  
 11 corresponding declaratory relief is appropriate with respect to the class as a whole, especially as  
 12 it involves uniform, federal immigration law and plaintiffs are transferred across the country by  
 13 defendants. Moreover, requiring separate actions by the members of this class would create the  
 14 risk of inconsistent or varying adjudications with respect to individual class members that would  
 15 establish incompatible standards of conduct for defendants.

16           136. The **credible fear interview class** satisfies Rule 23(b)(3). Questions of law or  
 17 fact common to members of this class predominate over questions affecting only individual  
 18 members. A class action is superior to other available methods for fairly and efficiently  
 19 adjudicating the legality of defendants' practice of failing to provide a credible fear interview  
 20 and determination within 10 days of a person's expressing a fear of persecution or requesting  
 21 asylum.

22 **B. "Bond Hearing Class"**

23           137. With respect to plaintiffs' claims concerning defendants' failure to promptly  
 24 conduct a bond hearing to set reasonable conditions for the asylum seeker's release pending the  
 25 lengthy proceedings to adjudicate his or her asylum claim, and to provide a bond hearing that  
 26

1 comports with the requirements of due process, plaintiffs seek to represent the following class  
2 (the “**bond hearing class**”):

3 All detained asylum seekers who entered the United States without inspection, who were  
4 initially subject to expedited removal proceedings under 8 U.S.C. §1225(b), who were  
5 determined to have a credible fear of persecution, but who are not provided a bond hearing  
6 with a verbatim transcript or recording of the hearing within 7 days of requesting a bond  
7 hearing.

8 138. Plaintiffs allege the following on information and belief: At least several hundred  
9 asylum seekers currently fit within the **bond hearing class**. Defendants should know the precise  
10 number since the members of this class should be readily ascertainable through defendants’  
11 records.

12 139. The **bond hearing class** satisfies Rule 23(a)(1). This class is so numerous that  
13 joinder of all class members is impracticable.

14 140. The **bond hearing class** satisfies Rule 23(a)(2). There are questions of law or  
15 fact common to this class. Given the definition of this class, its members all share the same  
16 common factual situation of being asylum seekers who entered the United States without  
17 inspection, were initially subject to expedited removal proceedings, were found to have a  
18 credible fear of persecution, but were then subject to defendants’ practice of failing to provide a  
19 bond hearing with a transcript or recording of the hearing within 7 days of their requesting a  
20 bond hearing. Moreover, defendant EOIR placed the burden on class members to demonstrate in  
21 bond hearings that plaintiffs are eligible for release, and defendants EOIR failed to make any  
22 specific, particularized findings of fact when denying release. The members of this class share  
23 common questions of law governing whether defendants’ practice of failing to provide a bond  
24 hearing with a transcript or recording of the proceeding within 7 days of their requesting a bond  
25 hearing, Defendant EOIR’s practice of placing the burden of proof on the detained asylum seeker  
26 to demonstrate their eligibility for release, and Defendant EOIR’s failure to make specific,



1 particularized findings when denying release, is legal under the Fifth Amendment, APA, or  
2 federal asylum statutes.

3 141. The **bond hearing class** satisfies Rule 23(a)(3). Plaintiffs' claims concerning the  
4 legality of defendants' practice of failing to provide a bond hearing with a transcript or recording  
5 of the proceeding within 7 days of an asylum seeker's requesting a bond hearing, Defendant  
6 EOIR's practice of placing the burden of proof on the detained asylum seeker to demonstrate  
7 they are eligible for release, and Defendant EOIR's failure to make specific findings when  
8 denying release, are typical of the claims of class members. As noted in the prior paragraph, the  
9 definition of this class dictates that plaintiffs share with the other class members the same  
10 common factual situation and the same common questions of law under the Fifth Amendment,  
11 APA, and federal asylum statutes.

12 142. The **bond hearing class** satisfies Rule 23(a)(4). Plaintiffs will fairly and  
13 adequately protect the interests of that class. They are represented by counsel from the  
14 Northwest Immigrant Rights Project and the American Immigration Council, who have extensive  
15 experience litigating class action lawsuits and other complex cases in federal court, including  
16 civil rights lawsuits on behalf of noncitizens.

17 143. The **bond hearing class** satisfies Rule 23(b)(1). Requiring separate actions by  
18 the members of this class would create the risk of inconsistent or varying adjudications with  
19 respect to individual class members that would establish incompatible standards of conduct for  
20 defendants. Requiring separate actions by the members of this class would create the risk of  
21 adjudications with respect to individual class members that, as a practical matter, would be  
22 dispositive of the interests of the other class members not parties to the individual adjudications,  
23 or would at least substantially impair or impede their ability to protect their interests.

24 144. The **bond hearing class** satisfies Rule 23(b)(2). Defendants have acted or  
25 refused to act on grounds that apply generally to this class. Final injunctive relief or  
26

1 corresponding declaratory relief is appropriate with respect to the class as a whole especially as it  
 2 involves uniform, federal immigration law and plaintiffs are transferred across the country by  
 3 defendants. Moreover, requiring separate actions by the members of this class would create the  
 4 risk of inconsistent or varying adjudications with respect to individual class members that would  
 5 establish incompatible standards of conduct for defendants.

6 145. The **bond hearing class** satisfies Rule 23(b)(3). Questions of law or fact  
 7 common to members of this class predominate over questions affecting only individual  
 8 members. A class action is superior to other available methods for fairly and efficiently  
 9 adjudicating the legality of defendants' practice of failing to provide a bond hearing with a  
 10 transcript or recording of the proceeding within 7 days of an asylum seeker's requesting a bond  
 11 hearing, defendant EOIR's practice of placing the burden of proof on the detained asylum seeker  
 12 to demonstrate they are eligible for release, and Defendant EOIR's failure to make specific,  
 13 particularized findings when denying release.

## 14 **VII. CAUSES OF ACTION**

### 15 **COUNT I**

#### 16 **(Violation of Due Process)**

17 146. All of the foregoing allegations are repeated and re-alleged as though fully set  
 18 forth herein.

19 147. The Due Process Clause of the Fifth Amendment applies to all "persons" on  
 20 United States soil and thus applies to Mss. Guzman, Orantes, Mr. Vasquez and all proposed class  
 21 members.

22 148. The named plaintiffs and proposed class members have a constitutionally  
 23 protected liberty interest in (1) not being imprisoned in federal detention for an unreasonable  
 24 time awaiting their credible fear interview and determination, (2) not being imprisoned in federal  
 25 detention for an unreasonable time awaiting their bond hearing, and (3) having a bond hearing  
 26 that is fair and comports with due process.

1           149. The federal government's imprisoning plaintiffs and members of the Credible  
2 Fear Interview Class in federal detention for an unreasonable time awaiting their credible fear  
3 interview and determination violates their substantive due process rights. The government's  
4 prolonging these asylum seekers' federal detention by delaying their credible fear interview and  
5 determination more than 10 days does not further a legitimate purpose. The government's  
6 prolonging these asylum seekers' federal detention by delaying their credible fear interview and  
7 determination more than 10 days does not further a compelling governmental interest.  
8 Defendants' prolonging their federal detention by delaying their credible fear interview and  
9 determination more than 10 days is a violation of the constitutional substantive due process  
10 rights of plaintiffs and their children as well as of members of the Credible Fear Interview Class.

11           150. The federal government's imprisoning plaintiffs and members of the Credible  
12 Fear Class in federal detention for an unreasonable time awaiting their credible fear interview  
13 and determination violates their procedural due process rights. That ongoing imprisonment  
14 awaiting a credible fear interview and determination is contrary to the law governing expedited  
15 removal proceedings and is imposed without any hearing. Defendants' imprisoning plaintiffs  
16 and members of the Credible Fear Interview Class in federal detention for an unreasonable time  
17 awaiting their credible fear interview and determination is a violation of the constitutional due  
18 process rights of plaintiffs and their children as well as of members of the Credible Fear  
19 Interview Class.

20           151. The federal government's imprisoning plaintiffs and members of the Bond  
21 Hearing Class in federal detention for an unreasonable time awaiting a bond hearing to assess  
22 their eligibility for release pending the lengthy proceedings to adjudicate their asylum claim  
23 violates substantive due process. The government's prolonging these asylum seekers' federal  
24 detention by delaying their bond hearing more than 7 days does not further a legitimate purpose.  
25 The government's prolonging these asylum seekers' federal detention by delaying their bond  
26

1 hearing more than 7 days does not further a compelling governmental interest. Moreover,  
2 denying release for general deterrence or punishment goals unrelated to the specific factors of  
3 whether the individual presents a flight risk or danger to the community unlawfully deprives  
4 these asylum seekers of their constitutional right to liberty. Defendants' prolonging plaintiffs'  
5 and members of the Bond Hearing Class's federal detention by delaying their bond hearing more  
6 than 7 days is a violation of the constitutional substantive process rights of plaintiffs and  
7 members of the Bond Hearing Class.

8 152. The federal government's imprisoning plaintiffs and members of the Bond  
9 Hearing Class in federal detention for an unreasonable time awaiting a bond hearing to assess  
10 their eligibility for release pending the lengthy proceedings to adjudicate their asylum claim  
11 violates procedural due process. That ongoing detention is imposed without providing a bond  
12 hearing with a transcript or recording of the hearing and specific, particularized findings with  
13 respect to any denial of release, denies plaintiffs and members of the Bond Hearing Class an  
14 adequate record to file an administrative appeal or habeas petition. Moreover, denying release  
15 for general deterrence goals unrelated to the specific factors of whether the individual presents a  
16 flight risk or danger to the community strips detained asylum seekers of a fair hearing. What is  
17 more, placing the burden on the noncitizen to demonstrate their eligibility for release also  
18 constitutes a violation of their due process rights. Defendants' prolonging plaintiffs' and  
19 members of the Bond Hearing Class's federal detention by failing to provide a bond hearing  
20 where the burden of proof is on the government and with a verbatim transcript or recording of  
21 the hearing within 7 days of requesting a bond is a is a violation of the constitutional substantive  
22 due process rights of plaintiffs and their children as well as of members of the Bond Hearing  
23 Class.

**COUNT II**  
**(Administrative Procedure Act)**

153. All of the foregoing allegations are repeated and re-alleged as though fully set forth herein.

154. Defendants' decision to detain plaintiffs and members of the Credible Fear Interview Class for an unreasonable time awaiting their credible fear interview, without a compelling justification and without a mechanism, protocol, or system to assure a prompt and fair credible fear interview and determination, is a final agency action. That action violates 5 U.S.C. §§706(1) and (2)(A) and (B).

155. Defendants' decision to detain plaintiffs and members of the Bond Hearing Class for an unreasonable time awaiting a bond hearing to set reasonable conditions for their release pending the lengthy proceedings to adjudicate their asylum claim, without a compelling justification and without a mechanism, protocol, or system to assure a prompt and fair bond hearing, is a final agency action. That action violates 5 U.S.C. §§706(1) and (2)(A) and (B).

156. Defendants' decision to deny plaintiffs and members of the Bond Hearing Class a bond hearing with adequate procedural protections, specifically a hearing where the burden of proof is on the government, a recording or transcript of the hearing available for any subsequent administrative appeal or habeas petition, and specific, particularized findings of any denial of release, is a final agency action. That action violates 5 U.S.C. §§706(1) and (2)(A) and (B).

157. The APA imposes on federal agencies the duty to conclude matters presented to it within a "reasonable time." 5 U.S.C. §555(b).

158. The APA prohibits agency action that is "unlawfully withheld or unreasonably delayed." 5 U.S.C. §706(1).

159. Defendant DHS and its sub-agencies are required to conduct an interview to assess whether an asylum seeker has a credible fear of persecution. This obligation is triggered when Defendants learn of an individual's fear of persecution. *See* 8 U.S.C. §1225(b)(1)(A)(ii).

1 Asylum seekers are only permitted to raise their claims before an immigration judge after the  
2 asylum officer's credible fear determination. *See* 8 C.F.R. § 208.30(f), (g).

3 160. Conducting a credible fear interview to determine whether a person seeking  
4 asylum has a credible fear of persecution is a discrete, final agency action that DHS is required to  
5 take.

6 161. Defendants' failure to expeditiously conduct a credible fear interview after  
7 detaining plaintiffs and members of the Credible Fear Interview class constitutes "an agency  
8 action unlawfully withheld or unreasonably delayed" under the APA. *See* 5 U.S.C. § 706(1).

9 162. If the asylum officer determines that an asylum seeker has a credible fear of  
10 persecution, the case is transferred to EOIR for adjudication of the asylum claim by an  
11 immigration judge.

12 163. An asylum seeker in the Bond Hearing Class is entitled to a bond hearing to  
13 assess eligibility for his or her release from DHS custody pending the lengthy proceedings to  
14 adjudicate his or her asylum claim.

15 164. Defendant EOIR's failure to promptly conduct a bond hearing for plaintiffs and  
16 members of the Bond Hearing Class within 7 days violates defendant's legal duty under the APA  
17 to conclude matters presented to it within a reasonable time.

18 165. Defendant EOIR's failure to conduct a bond hearing for plaintiffs and members of  
19 the Bond Hearing Class with appropriate procedural safeguards constitutes an agency action  
20 unlawfully withheld or unreasonably delayed in violation of the APA.

21 **COUNT III**  
22 **(Violation of Asylum Statute)**

23 166. All of the foregoing allegations are repeated and re-alleged as though fully set  
24 forth herein.  
25  
26

1           167. The Immigration and Nationality Act grants noncitizens fleeing persecution the  
2 opportunity to apply for asylum in the United States. 8 U.S.C. §1225(b)(1) (expedited removal);  
3 8 C.F.R. §§ 235.3(b)(4), 208.30, & 1003.42; 8 U.S.C. §1158(a)(1).

4           168. International law likewise recognizes the fundamental human right to asylum of  
5 persons fleeing for safety from persecution and torture.

6           169. Noncitizens fleeing persecution have a private right of action to vindicate their  
7 right to apply for and receive asylum in the United States.

8           170. Defendants' failure to promptly conduct a credible fear interview for plaintiffs  
9 and members of the Credible Fear Interview Class violates the asylum statute because it  
10 unlawfully infringes on their ability to pursue their asylum claims.

11           171. Defendants' failure to promptly conduct a bond hearing to assess eligibility for  
12 the release of plaintiffs and members of the Bond Hearing Class violates the asylum statute  
13 because it unlawfully infringes on their ability to pursue their asylum claims.

14                               **VIII. PRAYER FOR RELIEF**

15           Plaintiffs respectfully request that this Court enter judgment against defendants granting  
16 the following relief:

- 17           A. Certify the following **Credible Fear Interview Class**: "All detained asylum seekers  
18 in the United States subject to expedited removal proceedings under  
19 8 U.S.C. §1225(b) who are not provided a credible fear determination within 10 days  
20 of requesting asylum or expressing a fear of persecution to a DHS official."  
21           B. Name plaintiffs as representatives of the Credible Fear Interview Class, and appoint  
22 their counsel as class counsel.  
23           C. Declare that defendants have an obligation to provide Credible Fear Interview Class  
24 members their credible fear interview and determination within 10 days of that  
25 person's requesting asylum or expressing a fear of persecution to any DHS official.  
26

- 1 D. Preliminarily and permanently enjoin defendants from not providing Credible Fear  
2 Interview Class members their credible fear determination within 10 days of that  
3 person's requesting asylum or expressing a fear of persecution to any DHS official.
- 4 E. Certify the following **Bond Hearing Class**: "All detained asylum seekers who  
5 entered the United States without inspection, were initially subject to expedited  
6 removal proceedings under 8 U.S.C. §1225(b), were determined to have a credible  
7 fear of persecution, but are not provided a bond hearing with a verbatim transcript or  
8 recording of the hearing within 7 days of requesting a bond hearing."
- 9 F. Name plaintiffs as representatives of the Bond Hearing Class, and appoint their  
10 counsel as class counsel.
- 11 G. Declare that defendants have an obligation to provide Bond Hearing Class members a  
12 bond hearing within 7 days of their requesting a hearing to set reasonable conditions  
13 for their release pending adjudication of their asylum claim.
- 14 H. Declare that defendants have an obligation to provide Bond Hearing Class members  
15 (including plaintiffs) a bond hearing with adequate procedural safeguards, including a  
16 verbatim transcript or recording of their bond hearing.
- 17 I. Declare that defendant DHS must bear the burden of proof to show continued  
18 detention is necessary in civil immigration proceedings.
- 19 J. Declare that in bond hearings immigration judges must make specific, particularized  
20 written findings as to the basis for denying release from detention, including findings  
21 identifying the basis for finding that the individual is a flight risk or a danger to the  
22 community.
- 23 K. Preliminarily and permanently enjoin defendants from not providing Bond Hearing  
24 Class members their bond hearing with a verbatim transcript or recording of their  
25 bond hearing.
- 26



1 L. Preliminarily and permanently enjoin defendants from not providing Bond Hearing

2 Class members their bond hearing within 7 days of the asylum seeker's request.

3 M. Preliminarily and permanently enjoin defendants from not providing Bond Hearing

4 Class members bond hearings where defendant DHS bears the burden of proof to

5 show continued detention is necessary.

6 N. N. Preliminarily and permanently enjoin defendants from not providing Bond

7 Hearing Class members where immigration judges make specific, particularized

8 written findings as to the basis for denying release from detention, including findings

9 identifying the basis for finding that the individual is a flight risk or a danger to the

10 community.

11 O. Order defendants to pay reasonable attorneys' fees and costs.

12 P. Order all other relief that is just and proper.

1 Dated this 22nd day of August, 2018.

3 s/ Matt Adams

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25 forthcoming  
26

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2018, I had the foregoing electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 22nd day of August, 2018.

s/ Matt Adams

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